IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 11TH APRIL 2007 / 21ST CHAITHRA 1929

Crl.L.P..No. 188 of 2007()

CC.1941/2004 of JUDICIAL FIRST CLASS MAGISTRATE COURT -I, ALUVA

.....

PETITIONER/COMPLAINANT:

GEORGE RAPHEAL, S/O.RAPHEAL,
MANJOORAN (H), MANJOORAN LANE,
ALUVA WEST VILLAGE, ERNAKULAM DISTRICT.

BY ADVS. SRI.KURIAN ANTONY EDASSERY
SMT.ANN EMIL JOSEPH
SRI.BOSE K.THACHIL

RESPONDENTS/ACCUSED & STATE:

---

1. THOMAS GEORGE, S/O.K.M.GEORGE,
KOCHUPARAMBIL (H), ARIKUZHAKARA,
MAMAKKAD VILLAGE, THODUPUZHA, IDUKKI.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. M.S.BREEZ -R2

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION ON 11/04/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. L.P. NO. 188 OF 2007

Dated this the 11th day of April, 2007

O R D E R

This is a petition for special leave to appeal against the judgment in C.C. No. 1941 of 2004 on the file of the Judicial First Class Magistrate's Court-I, Aluva.

2. The appellant filed the complaint alleging that the cheque issued in his favour by the first respondent when presented to the bank for encashment was dishonoured stating that the account of the first respondent was closed. To prove the case against the first respondent, the appellant himself was examined as PW.1 and Exts.P1 to P9 were produced. Ext.D1 was produced on the side of the defence, but no witness was examined. After closing the evidence of the complainant, the first respondent was questioned under Section 313 Cr.P.C. Denying the allegation, the first respondent stated that there was no financial transaction between himself and the appellant which led to the issuance of the cheque in question. After considering the entire evidence, the court

below found that the appellant failed to prove that the cheque in question was issued by the first respondent in discharge of a legally enforceable debt as stated in the complaint. On a re-appreciation of the entire evidence, this Court is of the view that the appellant failed to prove any financial transaction between himself and the first respondent so as to attract an offence under Section 138 of the Negotiable Instruments Act, 1881. In the above circumstances, the impugned judgment requires no interference by this Court.

The Crl. Leave Petition is accordingly dismissed.

(K.THANKAPPAN, JUDGE)

sp/